

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

VECENTIE MORALES, JR.,)	
)	
Petitioner)	
)	
vs.)	No. CIV-05-903-C
)	
STATE OF OKLAHOMA,)	
)	
Respondent)	

ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed a “Notice of Removal” attempting to remove a pending criminal prosecution from the courts of the State of Oklahoma to this Court, relying on 28 U.S.C. § 1446. The matter was referred to United States Magistrate Judge Gary M. Purcell, consistent with 28 U.S.C. § 636(b)(1)(B), and on August 25, 2005, Judge Purcell entered a Report and Recommendation construing the Notice of Removal as a 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus, and recommending it be dismissed for failure to exhaust state remedies. Petitioner has timely objected, and the Court considers the matter de novo.

In his objection, Petitioner does not address the jurisdictional flaws analyzed by Judge Purcell in the Report and Recommendation. He merely reiterates the constitutional violations he alleges in connection with his state prosecution, without commenting on his failure to exhaust state remedies and the failure of the allegations to satisfy the stringent requirements for removal of a state court criminal case. The facts are therefore not in dispute, and the

Court finds that for the reasons stated in the exhaustive and well-reasoned Report and Recommendation of the Magistrate Judge, removal is ineffective, and the request for relief as construed as a habeas corpus petition fails for Petitioner's failure to exhaust available state remedies.

Accordingly, the Report and Recommendation is adopted, in its entirety, and for the reasons stated therein, this action is dismissed, without prejudice.

IT IS SO ORDERED this 21st day of September, 2005.


ROBIN J. CAUTHRON
United States District Judge